AMENDED IN SENATE APRIL 27, 2005

SENATE BILL No. 722

Introduced by Senator Denham

February 22, 2005

An act ~~relating to sexually violent predators~~ *to amend Section 3000 of, and to add Sections 1203.068 and 3003.6 to, the Penal Code, relating to sex offenders*, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 722, as amended, Denham. Sexually violent predators.

~~Existing law requires the Director of Corrections, prior to the release of a person from custody resulting from conviction for certain crimes of a sexual nature against 2 or more victims, to refer the person to the State Department of Mental Health for evaluation. The law authorizes civil commitment, as a sexually violent predator, if the person is adjudicated to be likely to engage in sexually violent criminal behavior if discharged. Under existing law, if the court finds that the person is no longer likely to commit acts of predatory sexual violence while under supervision and treatment in the community, it is required to a one-year community placement with an appropriate forensic conditional release program operated by the state.~~

~~Existing law requires that a nonparolee who is conditionally released under these provisions be placed in the county of the domicile, unless the court finds that extraordinary circumstances require otherwise. The law requires the department to notify certain persons of the proposed community placement, including, but not limited to, the sheriff or chief of police.~~

~~This bill would require the department to formulate a plan for the establishment of a secure, remote facility to house and treat persons~~

~~committed as sexually violent predators who are under court order to be released from the state hospital, and report the plan to the Governor and the Legislature by January 1, 2007.~~

Existing law provides that a person who is convicted of the commission of lewd or lascivious acts on a child who is under 14 years of age is ineligible for probation or a suspended sentence, except as specified.

This bill would provide that if probation is granted to a person convicted of violating these provisions on a person who is less than 12 years of age, he or she shall be required to agree to electronic monitoring or supervision as a condition of probation.

Because this bill would change the terms of probation for an existing crime, this bill would impose a state-mandated local program.

Existing law provides that the period of parole for an inmate sentenced for commission of lewd or lascivious act on a person less than 14 years of age shall not exceed 5 years.

This bill would provide that in the case of any inmate sentenced for commission of lewd or lascivious acts on a person less than 12 years of age, the period of parole shall be for life.

Existing law provides that the parole authority may require that an inmate or parolee agree to electronic monitoring or supervision as a condition of parole.

This bill would require a person who is convicted of the commission of lewd or lascivious acts on a person who is less than 12 years of age to agree to electronic monitoring or supervision as a condition of parole.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

SECTION 1. Section 1203.608 is added to the Penal Code, to read:

1203.608. If probation is granted to any person convicted of violating Section 288 on a victim who is less than 12 years of age he or she shall, as a condition of probation, agree in writing to the use of electronic monitoring or supervising devices for the purposes of helping to verify his or her compliance with all other terms of probation, consistent with Section 3004.

SEC. 2. Section 3000 of the Penal Code is amended to read:

3000. (a) (1) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Prison Terms to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) Any finding made pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, that a person is a sexually violent predator shall not toll, discharge, or otherwise affect that person's period of parole.

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be five years. Upon the request of the Department of Corrections, and on the grounds that the paroled inmate may pose a substantial danger to public safety, the Board of Prison Terms shall conduct a hearing to determine if the parolee shall be subject to a single additional five-year period of parole. The board shall conduct the hearing pursuant to the procedures and standards governing parole revocation. The request for parole extension shall be made no less than 180 days prior to the expiration of the initial five-year period of parole.

(4) *Notwithstanding any other provision, in the case of any inmate sentenced pursuant to Section 288 for lewd or lascivious acts on a child under 12 years of age, the period of parole shall be for life.*

(5) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

~~(5)~~

(6) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), and (3) shall be computed from the date of initial parole or from the date of extension of parole pursuant to paragraph (3) and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, in no case, except as provided in Section 3064, may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole, and, except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole or from the date of extension of parole pursuant to paragraph (3).

~~(6)~~

(7) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections or the Board of Prison Terms may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

~~(7)~~

(8) For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority.

~~(8)~~

(9) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Prison Terms, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

~~(9)~~

(10) It is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on parole to engage them in treatment.

SEC. 3. Section 3003.6 is added to the Penal Code, to read:

3003.6. The parole authority shall require, as a condition of release on parole or reinstatement on parole, that an inmate or parolee convicted of violating Section 288 with a victim who is less than 12 years of age agree in writing to the use of electronic monitoring or supervising devices for the duration of parole for the purpose of helping to verify his or her compliance with all other conditions of parole consistent with Section 3004.

~~SECTION 1. (a) The Legislature finds and declares all of the following:~~

~~(1) The forensic conditional release program that permits the state to place persons who have been committed as sexually violent predators, including, but not limited to, Brian Devries, Cary Verse, and Patrick Ghilotti, into our unsuspecting rural and urban communities for further treatment is both problematic and dangerous.~~

~~(2) Although the state has an interest in assuring that predators who qualify for community placement under the law are not the cause of community unrest, this interest must at all times be secondary to the state's primary interest in assuring that its citizens are safe. The state should not confuse the predators with the victims and should focus at all times on its primary duty to ensure that its actions don't increase the risks for unsuspecting communities by making dangerous new placements without notifying the communities and giving them an opportunity to be fully involved in the process.~~

~~(3) Persons who qualify for treatment in the community under the Conditional Release Program are still dangerous and require treatment and supervision. A change in the treatment setting from the state hospital to the community requires by necessity that the department transfer some oversight to the community. For this to be accomplished in a rational manner, the law must permit the community to be more actively involved in the decisionmaking.~~

~~(4) Despite enactment of AB 493 (Chapter 222 of the Statutes of 2004) requiring sexually violent predators on community release to be placed in the county of domicile, some exceptions are still permitted under the law and communities are still not fully included in the placement process.~~

~~(5) Moreover, the costs of the forensic conditional release program are excessive, in some instances reaching as much a $1,000,000 per released predator.~~

~~(6) The sole-source, no-bid contractor that the State Department of Mental Health has selected for supervision of the released predators has been hostile, unresponsive, and callous to local law enforcement and families who live near placed predators and have contacted the contractor for information or to report incidents.~~

~~(7) In the 1990s when then Governor Pete Wilson was faced with a court-ordered release of serial rapist Melvin Carter, he ordered Carter housed at a secure, remote, work-camp called "The Devil's Garden" in Modoc County. The State of Washington has a unique program where sexually violent predators are housed away from state's population in a secure facility on an island off the coast.~~

~~(8) If the state is unwilling or unable to fully involve target communities in the treatment and monitoring process, the alternative of selecting secure isolated sites for state hospital release of sexually violent predators reduces the risk for the unsuspecting population.~~

~~(b) The State Department of Mental Health shall formulate a plan for the establishment of a secure, remote facility to house and treat persons committed to a state hospital as sexually violent predators but who are under court order to be released from the state hospital pursuant to the forensic conditional release program.~~

~~(c) The State Department of Mental Health shall expend no more than $49,000 on formulating the plan, and shall complete the plan and report to the Governor and the Legislature by January 1, 2007.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SEC. 2.~~

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the community from dangerous sexually violent predators, it is necessary that this act take effect immediately.

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